

Department of the Army, DoD

§ 536.155

is determined to exist for both a NAFI and an appropriated fund activity, liability will be apportioned between the two activities.

(d) Temporary use of a NAFI facility by an appropriated fund activity.

(e) Operation of government owned or rented vehicles on authorized missions for NAFI activities where the driver is a DA soldier or civilian employee and is paid from APFs.

§ 536.151 Settlement authority for claims generated by acts or omissions of NAFI employees.

(a) *Settlement.* Claims cognizable under this section and processed under subparts C, D, E, G, H or J of this part will be settled by claims authorities authorized to settle claims under those subparts subject to the same monetary and denial authority limitations, except that The Judge Advocate General (TJAG), The Assistant Judge Advocate General (TAJAG), and the Commander USARCS may settle such claims without regard to monetary limitations. However, the approval of the Attorney General or Assistant General Counsel may be required for an apportioned amount to be paid from APFs when subpart D of this part procedures are used and the amount to be paid from APFs exceeds \$200,000. Similarly, approval of TAJAG, the Attorney General or the Assistant General Counsel is required when using procedures under subparts C, F, H, or J of this part and an apportioned amount to be paid from APFs exceeds the limits set for the Commander, USARCS.

(b) *Finality of settlement.* A determination made by a claims settlement authority on a claim processed under subpart D of this part is subject to suit. A claim processed under subparts C or F of this part may be appealed. Claims processed under subparts C, D, E, H, or J of this part, or AR 27-20, chapter 11 may be reconsidered in accordance with the sections addressing reconsideration in those subparts (or paragraphs in the case of Chapter 11).

§ 536.152 Payment of claims generated by acts or omissions of NAFI employees.

(a) The settlement or approval authority will forward the appropriate

payment documents to the office listed in DA Pam 27-162, paragraph 2-80h, for payment.

(b) Reimbursement to a foreign country of the United States' pro rata share of a claim paid pursuant to an international agreement will be made from NAFs.

§ 536.153 Claims involving tortfeasors other than nonappropriated fund employees: NAFI contractors.

AAFES concessionaires and NAFI contractors, such as entertainment performers or groups, carnival operators, and fireworks displayers are considered independent contractors and claims arising from their activities should be disposed of as set forth in DA Pam 27-162, paragraph 2-15f. If a dispute arises as to the availability of liability or workers compensation insurance the claims should be referred to AAFES Dallas (see address in § 536.30(e)(4)) or the Central Insurance Fund, U.S. Army Community and Family Support Agency as applicable.

§ 536.154 Claims involving tortfeasors other than nonappropriated fund employees: NAFI risk management program (RIMP) claims.

The risk management program (RIMP) is administered by the U.S. Army Community and Family Support Center under the provisions of AR 215-1 and AR 608-10 (Family Child Care Provider Claims). Providers in order to encourage authorized personnel, that is, military and civilian employees, to use the family child care program and sports equipment, such claims are processed in a manner similar to NAFI claims in §§ 536.146 through 536.152 of this subpart. Certain claims are payable from nonappropriated funds even though the U.S. is not liable under the FTCA or the MCA as the tortfeasor is not an appropriated fund or non-appropriated fund employee.

§ 536.155 Claims payable involving tortfeasors other than non-appropriated fund employees.

(a) Non-NAFI RIMP claims can arise from the activities of:

(1) Members of NAFIs or authorized users of NAFI sports equipment or devices for recreational purposes, while

using such property, except real property, in the manner and for the purposes authorized by DA regulations and the charter, constitution, and bylaws of the particular NAF activity.

(2) Family child care providers, authorized members of the provider's household and approved substitute providers while care under the family child care program is being provided in the manner prescribed in AR 608-10, except as excluded below. Such claims are generally limited to injuries to, or death of, children receiving care under the family child care program that are caused by the negligence of authorized providers. Claims arising from the transportation of such children in motor vehicles and claims involving loss of or damage to property are not cognizable.

(b) An ACO or a CPO will ask the Commander USARCS for an advisory opinion prior to settling any non-NAFI RIMP claim where the person whose conduct generated liability does not fall clearly within the categories listed above. Such authorities may also ask, through the Commander USARCS, for an advisory opinion from the U.S. Army Community and Family Support Center prior to settling any claim arising under paragraph (a)(2) of this section, where it is not clear that the injured or deceased child was receiving care within the scope of the family child care program.

(c) Where liability has been determined to exist for both non-NAFI RIMP and APF activities, liability will be apportioned between the two activities.

(d) The total payment for all claims (including derivative claims), arising as a result of injury to, or death of, any one person is limited to \$500,000 for each incident. Continuous or repeated exposure to substantially the same or similar harmful activity or conditions is treated as one incident for purposes of determining the limits of liability.

§ 536.156 Procedures for claims involving tortfeasors other than non-appropriated fund employees.

(a) *Reporting.* Non-NAFI RIMP claims (regardless of the amount claimed) and incidents that could give rise to non-NAFI RIMP claims will be reported to

USARCS and the Army Central Insurance Fund immediately.

(b) *Investigation.* ACOs and CPOs are responsible for the investigation of non-NAFI RIMP claims. Such investigation will be closely coordinated with program managers responsible for the activity generating the claim. Close coordination with USARCS is also required, and USARCS will maintain mirror files containing the investigative materials of all actual and potential claims.

(c) *Payment.* Non-NAFI RIMP claims will be transmitted for payment to: The Army Central Insurance Fund, ATTN: CFSC-FM-I, 4700 King Street, Alexandria, VA 22302-4406.

(d) *Commercial insurance.* The provisions of § 536.148(d) also apply to claims arising under this section, except that in claims involving family child care providers, a claims investigation will be conducted regardless of whether commercial insurance exists.

§ 536.157 Settlement/approval authority for claims involving tortfeasors other than nonappropriated fund employees.

(a) *Settlement authority.* TJAG, TAJAG, and the Commander USARCS are authorized to approve in full or in part, or deny a non-NAFI RIMP claim, regardless of the amount claimed, except where an apportioned amount to be paid from APFs exceeds their monetary authority and the action of the Attorney General or Assistant General Counsel is required as set forth in § 536.151(a).

(b) *Approval authority.* (1) The staff judge advocate, Commander or chief of a command claims service, and a head of an area claims office are authorized to approve in full or in part non-NAFI RIMP claims presented in the amount of \$50,000 or less, provided the acceptance is in full settlement and all claims and potential claims arising out of a single incident do not exceed \$100,000.

(2) The above authorities are not delegated authority to deny or make a final offer on a claim under this section. Claims requiring such action will be forwarded to the Commander USARCS with an appropriate recommendation.